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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

3437

V. 3437

ARTHUR R. DECATUR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

FILED

DEC 26 1967

WM. B. LUCK, CLERK

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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APPELLEE'S BRIEF

I

JURISDICTION AND
STATEMENT OF THE CASE

The appellant, Arthur Ronald Decatur, was indicted on February 16, 1966 by the Federal Grand Jury for the Southern District of California, Central Division. ^{1/}

Counts 2, 3 and 4 of this indictment charge appellant Decatur, together with one Ruby Jean Jackson, who plead guilty before trial and is not an appellant, with the possession of stolen

^{1/} C. T. 2; "C. T." refers to Clerk's Transcript of Proceedings. Reporter's Transcript of the Proceedings will be referred to as "R. T."

mail, in violation of Title 18, United States Code, Section 1708, and with aiding and abetting the forgery and uttering of a United States treasury check, in violation of Title 18, United States Code, Section 2 and 495 (C. T. 2-5).

Appellant was arraigned on February 24, 1966, and a plea of not guilty was entered (C. T. 6).

A jury was impanelled and sworn on March 28, 1966 (C. T. 16). A Motion to Suppress was filed on March 29, 1966 (C. T. 17-23), and was denied on March 30, 1966, by the Honorable Thurmond Clarke, whereupon trial of the case to a jury immediately commenced (R. T. 61-62). On March 31, 1966, the jury returned a verdict of guilty as charged in Counts 2, 3 and 4 of the indictment (C. T. 46).

On April 6, 1966, appellant was sentenced to imprisonment for a period of two years on each of counts 2, 3 and 4, to begin and run consecutively, for a total of six years, under Title 18, United States Code, Section 4208(a)(2) (C. T. 49-50).

Appellant filed notice of appeal, effective as of April 15, 1966 (C. T. 51).

The jurisdiction of the District Court is predicated on Title 18, United States Code, Sections 2, 495 and 1708, and Sections 3231 and 3237.

This Court has jurisdiction under Sections 1291 and 1294, Title 28 of the United States Code.

II

STATUTES INVOLVED

Count One of the Indictment charges a violation of Title 18, United States Code, Section 1708, which reads in pertinent part:

"Whoever . . . unlawfully has in his possession, any letter . . . which has been stolen, taken embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted --

"Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

Counts Two and Three of the Indictment charge a violation of Title 18, United States Code, Section 495, and Title 18, United States Code, Section 2.

Title 18, United States Code, Section 495, reads in pertinent part as follows:

"Whoever falsely makes, alters, forges, or counterfeits any -- deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or enabling any other person, either directly or indirectly to obtain or receive from the United States or any officers or agents thereof, any sum of money or:

"Whoever utters, or publishes as true any

such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited;

"Shall be fined not more than \$1,000 or imprisoned not more than ten years of both. "

Title 18, United States Code, Section 2, reads in pertinent part as follows:

(a) "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. "

(b) "Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal. "

III

STATEMENT OF FACTS RELATIVE TO SEARCH AND SEIZURE

On January 3, 1966, Stanley M. Smoot, a postal inspector for 30 years, received a report that a relay box containing mail for delivery in the 6900 block of Miramonte had been opened and a number of letters containing checks were missing. Included in the list of missing checks was one payable to a Roberta Robinson

(R. T. 79).

On January 6, 1966, co-defendant Ruby Jean Jackson was arrested in the Sav-Mor Market while identifying herself as Roberta Robinson and attempting to pass the aforesaid missing check (R. T. 79-80).

Knowing this, and that defendant Jackson had made a telephone call to a non-published number registered to one Shirley Boone at 1030 West 104th Street, Los Angeles, the postal inspectors visited Boone's residence, on the day of Jackson's arrest, and at that location observed some photographic equipment, which Shirley Boone stated belonged to her boyfriend, whom she identified as Alvin Decatur (R. T. 80-82).

On January 19, 1966, Inspector Smoot received word from the postal laboratory in San Francisco that one of the enclosures and one of the envelopes recovered from Ruby Jean Jackson at the time of her arrest bore the latent fingerprints of appellant, Arthur Ronald Decatur (R. T. 83).

A warrant was issued for the arrest of Decatur, on January 19, 1966 (R. T. 83), and postal inspectors attempted to locate Decatur at his last known address, but found that the premises had been vacant since the previous November (R. T. 83).

Knowing that Decatur and Shirley Boone were acquainted, and that on one occasion, Ruby Jean Jackson had telephoned the Boone residence, the postal authorities began observation of the Boone residence. An automobile registered to Decatur was observed parked at Boone's residence "from time to time".

However, at no time was a driver seen in the vehicle (R. T. 83-84).

On the morning of January 21, 1966, Inspector Smoot telephoned the Boone residence and asked for "Art". A male voice came to the telephone, and the speaker identified himself as "Art".

Shortly thereafter, Inspector Smoot, together with other officers, knocked at the door of the Boone residence (R. T. 84). Smoot tried the door, having received no answer and found it to be unlocked. He announced his authority and purpose, advising that he was a United States postal inspector, and that he had a warrant for appellant Decatur (R. T. 98-99)

Upon entering, Inspector Smoot observed defendant Decatur lying in a bed in the front bedroom. Decatur pulled the sheet covers over his head (R. T. 84).

Inspector Smoot entered the room, pulled the covers back, and advised appellant Decatur that he was under arrest for the unlawful possession of stolen mail. After being informed of his constitutional rights, Decatur stated that he "well knew" what they were (R. T. 84-85).

In this room, immediately adjacent to Decatur's bed, Inspector Smoot observed "a layout of considerable photographic equipment", in full view (R. T. 85). Defendant Decatur admitted owning this property (R. T. 163).

The equipment included an enlarger (Court's Exhibit No. 1), a 120 millimeter Hasselblad camera (Government's Exhibit No. 2), some California driver's license documents which had paper pasted over them (Court's Exhibit No. 4), some photographic reproduc-

tions of the same covered driver's license documents (Government's Exhibit No. 5), a photographic reproduction of a California driver's license in the name of Thomas Herbert Decatur (Government's Exhibit No. 6), two photographic negatives depicting driver's licenses (Government's Exhibit No. 7), a bottle of photographic fluid (Government's Exhibit No. 8), and a box of Kodak Polycontrast photographic paper (Government's Exhibit No. 9), all of which exhibits were received into evidence without objection. Government's Exhibit No. 3, also received into evidence, consisted of some photographic negatives taken from co-defendant Ruby Jean Jackson at the time of her arrest (R. T. 86-93). If, indeed, any other evidence was discovered in the Boone residence or Decatur's automobile at the time of his arrest, such evidence was never offered at trial.

IV

ARGUMENT

NO ERROR WAS COMMITTED WHEN THE EXHIBITS, SEIZED FROM APPELLANT'S IMMEDIATE CUSTODY AND CONTROL AT TIME OF HIS LAWFUL ARREST, WERE RECEIVED INTO EVIDENCE WITHOUT OBJECTION.

Government's Exhibits 1, 2, 4, 5, 6, 7, 8 and 9 were the only exhibits offered at trial which had been seized by the postal inspectors as incident to the arrest of appellant Decatur, and all of these were found, lying in full view in the bedroom in which he was arrested. No objection was made at the time they were offered

into evidence. Appellant now complains that, "Although the arrest was lawful, and the seizure of most of the equipment and other evidence was made within the same room in which he was arrested, the Federal agents and their accomplices made a general, exploratory search of the rest of the premises in which the defendant was a guest." (Appellant's Opening Brief, page 8)

The record indicates that it is not a question of "most" of the evidence being seized from the immediate custody and control of the appellant, rather, all of the evidence was so discovered. And it is, of course, well settled that a search without a warrant which may be made as incident to a lawful arrest may under appropriate circumstances extend beyond the person of the one arrested to include the premises under his immediate control.

Harris v. United States, 1947, 331 U.S. 145,

67 S.Ct. 1098, 91 L.Ed. 1399;

Burks v. United States, 287 F.2d 117

(9th Cir., 1961).

Furthermore, appellant's contention that the evidence received was found in a general exploratory search has no foundation in the trial record. Even though appellant made such contention in an unsworn declaration filed in his Motion to Suppress (C.T. 21), he did not raise it when he took the stand during trial. Nor was Inspector Smoot, called as witness for the Government and for the defense, and subject to cross-examination, ever asked about the duration or extent of his search.

CONCLUSION

A review of the entire record reveals no error prejudicial to the rights of appellant and, accordingly, the judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ William J. Gargaro, Jr.

WILLIAM J. GARGARO, JR.

